IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 549 of 2001

with

CRIMINAL MISC.APPLICATION No 5903 of 2001
[Suo Motu Proceedings initiated by the learned Single Judge for Enhancement of Sentence]

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MOHANBHAI LAXMANBHAI SONI

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Appeal No. 549 of 2001
MR AD SHAH for Appellants
MS NANDINI JOSHI, APP for Respondent

2. Criminal Misc.Application No. 5903 of 2001
SUO MOTU for Petitioner No. 1

MR AD SHAH for Opponents

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE J.R.VORA

Date of decision: 04/03/2002

COMMON ORAL JUDGEMENT (Per : MR.JUSTICE J.M.PANCHAL)

1. The above numbered Appeal which is filed under Section 374(2) of the Code of Criminal Procedure, 1973 is directed against the judgment dated June 25, 2001 rendered by the learned Additional Sessions Judge, Bharuch, in Session Case No. 158/98, by which the appellants are convicted of the offences punishable under Section 498-A and 306 IPC and punished with SI for one year and fine of Rs. 1,000/-, in default S.I. for one month for having committed the offence punishable under Section 498-A IPC and SI for three years and fine of Rs. 1,000/-, in default SI for one month for having committed the offence punishable under Section 306 IPC. We may state that the learned Judge has directed that both the substantive sentences shall run concurrently.

2. The complainant Jagadischandra Chunnilal Soni, is resident of Kalol Town, District Mehsana. The name of his eldest daughter was Naynaben. The marriage of Naynaben had taken place on January 31, 1998 as per the custom prevailing in the caste of the complainant with Lalitchandra who is son of the appellants. The appellants are residents of Bharuch town. After marriage, Nayanaben had come to Bharuch town and was residing with her husband and other members in the joint family of the appellant No.1. On the occasion of first Holy after marriage, the complainant had desired to bring his daughter to Kalol and, therefore, gone to the residence of the appellants but had not found either his daughter or his son-in-law in the house and on inquiry, the appellant No.1 had informed him that both of them had gone to the house of Arvindbhai Vishnubhai Jani, who is also residing in Bharuch Town. As the daughter of the complainant was not in the house of her in-laws, the complainant had waited and after return of Nayna to her in-laws house, he had brought his daughter Nayna on the next day to Kalol town. While the complainant had gone to Bharuch town to bring his daughter to Kalol town, he had found that his daughter Nayna was unhappy. When Nayna was at Kalol town, her husband Lalitchandra had also come to Kalol town on Holy day and stayed at Kalol town on the next day also which was Dhuleti day. The son-in-law of the complainant had thereafter taken Nayna

with him to Bharuch on the next day of Dhuleti. On April 13, 1998, Nayna had telephoned complainant at this residence and asked the complainant to come to Bharuch immediately and had also informed the complainant that she was at the residence of Arvindbhai Vishnubhai Jani. Accordingly, the complainant in the company of his wife had gone to Bharuch and after reaching Bharuch, first of all, the complainant had gone to the house of the appellant No.1 but had not found either his daughter or his son-in-law present in the house and, therefore, made inquiries about them. Thereupon, the appellant No.1 had informed the complainant that a quarrel had taken place between him and Lalitchandra regarding separate stay of Lalitchandra from him and, therefore, Lalitchandra and Nayna had gone to the house of Arvindbhai Vishnubhai Jani. Thereupon, the complainant and his wife had gone to the house of Arvindbhai Vishnubhai Jani where Nayna had informed the complainant that the appellants were quarreling with her on trivial issues whereas Lalitchandra i.e. son-in-law had informed the complainant that his desire was to stay separate from the appellants. The complainant and his wife had persuaded Lalitchandra and Nayna to go back to the house of the appellants and accordingly, Lalitchandra and Nayna had gone to the house of the appellants, after which the complainant and his wife had returned to Kalol. After about 8 days, the complainant had telephoned his daughter Nayna and at that time also Nayna had informed the complainant that her mother-in-law and father-in-law were quarreling with her on trivial issues. Being father, the complainant had advised Nayna to tolerate the same. On April 28, 1998 at about 10.30 a.m. a telephonic message was received by wife of the complainant from one Ganpatbhai to the effect that Naynaben had become serious and, therefore, they should come to Bharuch town immediately. At the time, when the telephonic message was received, the complainant was not at his house but was at his shop and, therefore, his wife had conveyed message to him on telephone. On receipt of the message, the complainant had immediately rushed to his house and telephoned one Rasiklal Rana, who was then not available on phone, but the person who had picked up the receiver had informed the complainant that his daughter had committed suicide by hanging. Therefore, immediately the complainant had hired a jeep and gone to Bharuch town in the company of his wife, son and other relatives. In view of the telephonic talk which the complainant had with the deceased, the complainant was convinced that the deceased had committed suicide because she was insulted often and on by the appellants and that the appellants had made her life miserable. Therefore, the complainant

had gone to Bharuch Police Station and lodged complaint against the appellants. The investigation into the case was conducted by Mr. Narasinh Ganpatsinh Dodiya, who was then PSI, Bharuch City `A' Division Police Station. The Investigating Officer had held inquest on the dead body of the deceased in the presence of panchas and made arrangement for sending the dead body to Government Hospital for post-mortem examination. The Investigating Officer had also prepared panchnama of place of incident and recorded statements of those who were found conversant with the facts of the case. After postmortem examination, the dead body was handed over to the complainant for performing last rites. On conclusion of investigation, the appellants were chargesheeted of the offences punishable under Section 498-A and 306 IPC in the Court of learned Chief Judicial Magistrate, Bharuch. As the offence punishable under Sections 306 is exclusively triable by a Court of Sessions, the case was committed to Sessions Court, Bharuch for trial where it was numbered as Session Case No. 158/98. The learned Judge had framed charge at Exh.17 against the appellants of the offences punishable under Sections 498, 306 IPC. The charge was read over and explained to the appellants who had not pleaded guilty to the same and claimed to be tried. The prosecution had therefore examined (1) complainant - Jagadishchandra Chunnilal Soni, PW-1 Exh.29, (2) Pannalal Jawaharbhai Soni, PW-2, Exh.32, (3) mother of the deceased i.e. Kamalaben Jagadischandra Soni, PW-3, Exh.33, (4) Rameshbhai Tulsibhai Soni, PW-4, Exh. 34, (5) Dr. Ashokkumar Parmanand Gupta, PW-5, Exh.35, (6) Haribhai Sitarambhai Barot, PW-6, Exh.37, (7) Nagjibhai Ambalal Modi, PW-7, Exh.38, (8) Jitendra Thakorlal Brahmbhatt, PW-8, Exh.40, (9) Rasiklal Ratilal Rana, PW-9, Exh. 41, (10) Bhagwatiben Ganpatlal Soni, PW-10, Exh.42, (11) Sureshbhai Laxmidas Mehta, PW-11, Exh. 45, (12) Jagrutiben Bipinchandra Rana, PW-12, Exh.47, (13) Arvindbhai Vishnubhai Jani, PW-13, Exh.48, (14) Naransinh Ganpatsinh Dodiya, PW14, Exh.49 and (15) Kiritsinh Surubha Zala, PW-15, Exh.53 to prove its case against the appellants. The prosecution had also produced documentary evidence, such as, complaint filed by Jagdishchandra Chunnilal Soni at Exh.30, postmortem notes of the deceased prepared by Dr. A.K. Gupta, at Exh.36, inquest panchnama at Exh.39, panchnama of place of incident at Exh.46, etc. in support of its case against the appellants. After recording of evidence of prosecution witnesses was over, the learned Judge had explained to the appellants the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statements as required by Section 313 of the Code of Criminal Procedure. In their

further statements, the defence pleaded by the appellants was that they had not meted out any cruelty to the deceased and that as the deceased was sentimental and as she could not stay separate from the appellants with her husband because of the persuasion by her parents she had committed suicide of her own.

3. In support of the defence, the appellants had examined (1) Vanmalidas Shankerdas Motiyar, DW-1, Exh.58, (2) Bhanvarlal Narsinhji Soni, DW-2, Exh.61, (3) Misrimal Voridas Soni, DW-3, Exh.62, (4) Ratilal Umedbhai Soni, DW-4, Exh.63, (5) Pravinaben Kamlesh Soni, DW-5, Exh.65, (6) Ganpatbhai Mohanlal Soni, DW-6, Exh.66, (7) Lalitchandra Mohanbhai Soni, DW-7, Exh.89 and (8) Jugraj Mithalal Soni, DW-8, Exh.93. Over and above examining the defence witnesses, the appellants had also produced letters written by the deceased to her husband at Exhs. No. 67 to 85 and submitted written arguments for the consideration of the Court. On consideration of evidence adduced by the parties and after hearing the learned counsel for the parties, the learned Addl. Sessions Judge held that it was proved by the prosecution beyond reasonable doubt that deceased Nayna had committed suicide on April 28, 1998 between 10.30 a.m. to 11.00 a.m. in the house of the appellants by hanging and cause of her death was asphyxia following hanging. The learned Judge noticed that the deceased had committed suicide within three months of her marriage with the son of the appellants and that this was a disturbing feature of the case. The learned Judge referred to the evidence of parents of the deceased as well as that of Rameshbhai Tulsibhai Soni, PW-4, Exh.34, Rasiklal Ratilal Rana, PW-9, Exh.41 and concluded that the appellants had meted out cruelty to the deceased within the meaning of Section 498-A IPC. The learned Judge further deduced that the cruelty which was meted out to the deceased by the appellants was wilful conduct on their part and it was of such a nature as to drive the deceased to commit suicide and therefore the appellants had committed an offence punishable under Section 306 IPC. In view of the above referred to conclusions, the learned Judge was of the opinion that it was established by the prosecution beyond reasonable doubt that the appellants had committed the offences punishable under Sections 498A and 396 IPC. The learned Judge had thereafter heard the appellants about the question of sentence and has imposed the sentence referred to above by judgment dated June 25, 2001 giving rise to the present appeal.

4. Rule-2 of Chapter-I Part-I of the Gujarat High Court Rules, 1993, provides that a Single Judge may

dispose of an Appeal against conviction in which only a sentence of fine or imprisonment for a period not exceeding seven years with or without fine has been imposed. Therefore, the appeal was placed for admission hearing before the learned Single Judge of this court. The appeal was ordered to be admitted but prayer for bail was rejected by the learned Single Judge of this Court by a speaking order dated July 23, 2001 running into 16 pages. The learned Judge was also of the opinion that punishment of three years' simple imprisonment imposed on each of the appellants was inadequate and that sufficient punishment as provided in Section 306 IPC ought to have been imposed on the appellants having regard to the facts of the case and therefore while admitting the appeal, the learned Single Judge exercised suo motu powers and issued notice to the appellants for enhancement of sentence. The suo motu proceedings for enhancement of sentences is numbered as Criminal Misc. Application No. 5903/2001. Feeling aggrieved by the order of the learned Single Judge refusing to grant bail, the appellants had preferred Special Leave to Appeal (Criminal) No. 3580/01 before the Supreme Court. The Supreme Court did not entertain Spl. Leave Petition but observed that the matter pending before the High Court should be dealt with preferably within a period of eight months. Further the Supreme Court had reserved liberty to the appellants to mention the matter before the Hon'ble the Chief Justice for appropriate directions and it was observed that if the matter was not disposed of within stipulated time, the appellants would be at liberty to apply for bail before the High Court. Subject to certain observations, Special Leave Petition was disposed of by the Supreme Court vide order dated October 8, 2001. Rule-2 of Chapter-I Part-I of the Gujarat High Court Rules, 1993, inter alia, provides that a Single Judge may dispose of an appeal against conviction in which only a sentence of fine or imprisonment for a period not exceeding seven years with or without fine has been imposed except (i) where a notice of enhancement of sentence has been issued where the accused has been sentenced for a term of two years or more and (ii) where a notice has been issued to show cause why his conviction should not be altered to one of an offence punishable with death or imprisonment for life. In view of exception (i) the Office has placed the appeal for disposal before the Division Bench and having regard to the observations made by the Supreme Court, we have taken up the appeal as well as suo motu proceedings for final disposal.

5. Mr. A.D. Shah, learned counsel for the appellants submitted that the prosecution has failed to

prove cruelty as contemplated by Section 498-A IPC and, therefore, the conviction of the appellants under section 498-A and 306 IPC is erroneous. The learned Counsel emphasised that the evidence on record shows that there was some dissatisfaction to deceased Nayna in respect of household work as well as customs to be observed in the family but there is no evidence of either physical cruelty or mental cruelty to her and, therefore, the conviction of the appellants under Section 498A IPC should be regarded as illegal. It was pointed out that the evidence of Arvindbhai Vishunubhai Jani, PW-13, Exh.48 would show that deceased Nayna and her husband wanted to stay separate but that her desire to settle down separate from the appellants was not liked by her parents and as she was sentimental she had committed suicide but she had not committed suicide because of the alleged cruelty meted out to her by the appellants. After referring to the evidence of Jagdishchandra Chunnilal Soni, PW-1 Exh.29, the learned counsel pleaded that deceased Nayna was dissatisfied regarding household work, etc. but the said witness has failed to specify the nature of disputes and, therefore, his evidence does not help prosecution in proving charge of cruelty levelled against the appellants. Similarly, after referring to the evidence of Kamalaben Jagdishchandra Soni, PW-3 Exh.33, the learned counsel emphasised that deceased had complained to Kamalaben that there were quarrels in the family and those quarrels were pertaining to dispute between father and son (husband of deceased Nayna) as husband of deceased Nayna was determined to stay separate but her evidence does not establish that the appellants had meted out any cruelty to the deceased. What was urged was that the evidence of Kamalaben clearly reveals that when Naynaben had come to Kalol on Holy occasion, she had talked about staying separate from the appellants and when Lalitchandra (the husband of deceased Nayna) had come, he had also talked about staying separate but the witness had advised that other elder brothers should stay separate from the appellants but not the deceased and Lalitchandra and as deceased Nayna was sentimental, she had committed suicide of her own and that no cruelty was meted out to her at all by the appellants. It was claimed on behalf of the appellants that the parents of deceased Nayna had persuaded her and her husband to stay in the joint family on April 14, 1998 whereas the incident of suicide by deceased Nayna had taken place on April 28, 1998 and as no evidence is led by the prosecution to indicate that the quarrels had continued to take place in respect of household work between April 14, 1998 to April 28, 1998, the charge of cruelty levelled against the appellants should be

disbelieved. The learned counsel referred to the letters produced on the record of the case in detail and contended that the letters produced suggest that deceased was short tempered, dominating and carrying an idea to put an end to her life if her desires were not fulfilled and, therefore, in view of the failure of the prosecution to establish offence under Section 498-A, the appeal should be allowed. Further, it was stated that as the prosecution has failed to establish cruelty as contemplated by Section 498-A IPC, the learned Judge of the Trial Court was not justified in raising presumption that the appellants had abetted suicide by the deceased and, therefore, the conviction of the appellants under Section 306 should be set aside. In support of his submissions, the learned Counsel placed reliance on (1) STATE OF GUJARAT vs. SUNIKUMAR K. JANI, 1996(2) GLH 5, (2) INDRASING M. RAOL vs. STATE OF GUJARAT, 1999 (2) GLH 596, (3) ARVIND SINGH vs. STATE OF BIHAR, 2001 SCC (Cri) 1148, and (4) BHARAT K. GUPTA vs. ARUN KUMAR AND ANOTHER, 2001 SCC (Cri) 1517. Dealing with Suo Motu proceedings issued by the High Court for enhancement of sentence, the learned Counsel for the appellants submitted that the letters Exhibits 75, 77, 78, 79, 80 and 81 disclose frame of mind of the deceased to the effect that if things desired by her did not take place, she might commit suicide and as the appellants had never demanded any dowry from the deceased or her parents and as the aspect of mental cruelty, if any, had arisen due to social customs prevailing in the family and the strata of the society to which the appellants belong, the sentence of three years imposed for the offence punishable under Section 306 should not be considered manifestly inadequate or too lenient. In support of this plea, learned counsel placed reliance on the decisions (i) SHIV GOVIND vs. THE STATE OF MADHYA PRADESH, AIR 1972 SC 1823, (ii) NARESH KUMAR AND ANOTHER vs. STATE OF HARYANA, 1994 SCC (Cri) 502, (iii) STATE OF A.P. vs. KUNA SATYANARAYANA, (1998) 8 SCC 268.

6. Ms. Nandini Joshi, learned APP for the State argued that the evidence of (1) Jagdishchandra Chunnilal Soni, PW-1 Exh.29 read with evidence of (2) Pannalal Jawaharbhai Soni, PW-2 Exh.32, (3) Kamalaben Jagadischandra Soni, PW-3, Exh.33, (4) Rameshbhai Tulsibhai Soni, PW-4, Exh.34, (5) Rasiklal Ratilal Rana, PW-9, Exh.41, and (6) Arvindbhai Vishnubhai Jani, PW-13, Exh.48, establishes beyond reasonable doubt that the appellants were quarrelling with the deceased and taunting her constantly regarding household work to be performed by her as well as observance of veil and therefore it cannot be said that the learned Judge of the

Trial Court committed any error in holding that the appellants had meted out cruelty to the deceased within the meaning of Section 498-A IPC. Elaborating her submissions, the learned counsel stressed that to taunt a newly wedded bride for observing custom of veil must be regarded as a cruelty to her in this 21st century and, therefore, it is wrong to say that the deceased was not meted out any cruelty by the appellants. It was urged by the learned APP that the evidence of the parents of the deceased which gets corroboration from other evidence on record shows that the appellants were quarrelling with the deceased regarding household work to be performed by her and were also taunting continuously which had made her life miserable, as a result of which, she had committed suicide out of desperation and, therefore, the well founded conviction of the appellants under Section 498-A read with 306 IPC should be upheld by the Court. The learned counsel further pleaded that the letters which have been produced by the defence on the record of the case do not indicate that either the deceased was dominating or that she was obstinate as is sought to be contended by the learned counsel for the appellants and in absence of evidence indicating tendency on the part of the deceased to commit suicide in past, the finding recorded by the learned Judge that she had committed suicide because of cruelty meted out to her should be upheld. The learned counsel contended that the Legislature has introduced Section 113-A in the Indian Evidence Act with a specific purpose and having regard to the circumstances of the case the presumption which is raised by the learned Judge of the Trial Court under the said provision cannot be regarded as illegal. What was claimed on behalf of the State was that the deceased who was a young bride and whose betrothal with the son of the appellants had continued for a long time, was driven to commit suicide by the appellants because of their wilful act amounting to cruelty and, therefore, the appeal should be dismissed. Dealing with the question of enhancement of sentence, the learned APP pointed out that the punishment imposed on the appellants under Section 306 cannot be regarded as sufficient by any standard in view of the strict provisions of Section 306 IPC and as there is rise in crimes against women and more particularly young brides, the punishment imposed on the appellants should be enhanced to RI for 7 years.

7. We have considered the submissions advanced at the Bar and reappreciated the whole evidence on record. The fact that the marriage of the deceased with the son of the appellants had taken place on January 31, 1998 and that the deceased had committed suicide by hanging in the

house of the appellants on April 28, 1998 i.e. within three months of the marriage is not in dispute. The special feature of this case is that there is no allegation of cruelty levelled by the prosecution against the husband of the deceased but what is claimed by the prosecution is that the appellants who were father-in-law and mother-in-law respectively of the deceased had meted out cruelty to her, as a result of which she had committed suicide by hanging.

8. Section 498A IPC deals with cruelty by husband or relatives of husband of a woman and reads as under :

" Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation : For the purposes of this section, "cruelty" means - (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

9. A bare reading of the above referred to provisions makes it manifest that the definition of cruelty contained in Explanation consists of two parts. Clause (a) relates to wilful conduct which is of such a nature as is likely to drive the woman to commit suicide. The second part contained in Clause (b) relates to harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property, etc. It is only the second part which relates to unlawful demand for any property etc. It is therefore evident that cruelty within the meaning of Section 498A would take place if there is any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide and it is not necessary that to constitute cruelty, there must be harassment to the women relating to unlawful demand for any property, etc. If a woman is subjected to maltreatment and such treatment is likely to lead her to commit suicide, such conduct on the part of the husband or his relations whether mental or physical, will be

considered as cruelty. In the light of the above referred to principles, the evidence led by the prosecution will have to be judged to ascertain whether the deceased was meted out cruelty by the appellants or not.

10. The evidence of Jagdischchandra Chunnilal Soni, PW-1, Exh.29 shows that marriage of the deceased with the son of the appellants had taken place on January 31, 1998 and that after marriage the deceased had gone to her matrimonial home. His evidence further shows that three brothers of his son-in-law, two of whom were married as well as the appellants and mother of the appellant No.1 were also staying with the deceased. According to him, on the occasion of first Holy after marriage, he had gone to Bharuch for bringing his daughter to Kalol but had not found the deceased or his son-in-law in the house and on making inquiries, the appellant No.1 had informed him that the deceased and her husband (son of the appellants) had gone to the house of one Janibhai who is a family friend. According to Jagdishchandra, after about an hour, his son-in-law had come to his house with deceased and he had stayed for a night at Bharuch. What is claimed by this witness is that from behaviour and appearance of the deceased, he was able to make out that she was not happy. The witness has stated in his deposition that after he had come to Kalol with his daughter, his son-in-law had also come to Kalol on the next day and that thereafter his son-in-law had taken his daughter to Bharuch. The witness has further mentioned that he had received a telephonic message from deceased Nayna on April 13, 1998 and on telephone the deceased had entreated him to come to Bharuch immediately anyhow, as a result of which he had gone to Bharuch in the company of his wife Kamalaben and had not found the deceased and his son-in-law at the house of the appellants and that they were informed by the appellant No.1 that the deceased with her husband had gone to the house of Arvindbhai Vishnubhai Jani. The witness has further stated in his deposition that thereupon he had gone to the house of Janibhai where his son-in-law had informed that his desire was to stay separate from the appellants but that he had persuaded his daughter and son-in-law not to stay separate and return to the house of the appellants. The witness has asserted before the court that thereafter he had come back to Kalol and after about 8 days he had again telephoned his daughter but his daughter had informed him that the appellants were quarrelling with her on trivial matters. The witness has stated before the court that he had advised his daughter to tolerate the appellants and that on April, 28, 1998 he had

received telephonic message indicating that the deceased was serious as a result of which he had gone to Bharuch and found his daughter dead. In his cross-examination, the witness has stated that the deceased was dear to him and that it was not correct that the appellants were not treating the deceased cruelly. The witness admitted that brothers in-law, sisters-in-law of the deceased were staying in joint family with the deceased but denied the suggestion that the appellants were treating the deceased nicely. He denied the suggestion made on behalf of the appellant No.1 that he had strong dislike for the appellant No.1 and therefore was giving false deposition before the court. He also denied the suggestion that he was insisting that the deceased with her husband should stay in the joint family. In his cross-examination, the witness admitted that he had stated in his complaint that he had pleaded with the appellants not to quarrel with the deceased on trivial issues and that the appellants had told him that they would not quarrel with the deceased. The witness has also admitted that the appellants had never clarified before him as to what were the trivial issues regarding which the appellants were quarrelling with the deceased but explained that the trivial issues related to household work. The witness also denied the suggestion made by the defence that the deceased never wanted to stay with the appellants and had therefore committed suicide. Further, the witness has also denied the foolish suggestion made on behalf of the defence that he had no love for his daughter and, therefore, in order to see that his daughter leaves Kalol town he had got her married to Lalitchandra who was residing at Bharuch. A specific suggestion was made to him that for the purpose of compromising the case relating to the suicide of the deceased he had demanded a sum of Rs. 5 lacs but the witness emphatically denied the same and stated that he had never demanded any sum as suggested by the defence.

11. Coming to the evidence of Kamalaben Jagadischandra Soni, PW-3 Exh.33, who is mother of the deceased we find that she has specifically stated that when Nayna had come to Kalol at her house on the first Holy occasion after her marriage, she had found Nayna reduced to a great extent and on inquiry the deceased had told her that quarrels were taking place between her and the appellants and that the appellants were taunting her. The witness has specifically informed the court that the appellants were quarrelling with Lalitchandra (son of the appellants) as well as the deceased regarding household work. Further this witness has also stated that after one and half months of first Holy occasion, deceased

Nayna had telephoned her father i.e. Jagadishchandra and informed him that because of the quarrels her desire was to stay separate from the appellants. The witness has further informed the court that on receiving the telephonic message from her daughter, she had gone to Bharuch in the company of her husband and at the house of one Janibhai the deceased had informed her that when Lalitchandra was taking lunch, the appellant had quarrelled and therefore they had come to the house of Janibhai. This witness has also stated that her husband i.e. Jagdishchandra had persuaded the deceased and her husband to return to the house of the appellants and that thereafter she in the company of her husband had returned to Kalol. The witness has categorically asserted that the appellants were quarrelling with the deceased as well her husband and repeated quarrels were taking with the deceased regarding household work to be performed by her. She has further deposed that after she had conveyed message to the complainant to the effect that the deceased had become serious, the complainant had come home and telephoned one Mr. Ranabhai who had informed the complainant that during the previous night a quarrel had taken place and that the deceased was physically beaten. It is relevant to notice that this assertion is not effectively challenged in her cross-examination at all. In cross-examination the witness has stated that she had advised the deceased not to stay separate and that one of the elder brothers of the husband of the deceased should stay separate from the appellants. The witness denied the suggestion made by the defence that she had instigated her daughter to harass the appellant No.2. The witness denied another suggestion of the defence that her daughter had committed suicide of her own and that she was giving false deposition to implicate the appellants.

12. Again the evidence of Rameshbhai Tulsibhai Soni, PW-4 Exh. 34, shows that on hearing that the deceased had committed suicide on April 28, 1998, he had gone to Bharuch with Jagadishchandra and had stayed at the house of the appellant No.1 where he had learnt that the deceased had committed suicide because the appellants were quarrelling with the deceased. We may state that this part of the evidence of this witness is not challenged by the defence at all. Further the evidence of Rasiklal Ratilal Rana, PW-9 Exh.41, shows that formerly he was serving in ST Office and is residing near the house of the appellants. This witness has stated in his evidence that on hearing shouts on the date of incident, he had gone to the house of the appellants and found the deceased hanging with a fan. The witness has

further stated that his wife and his daughter had informed him that the appellants were taunting and quarrelling with the deceased. Though this witness has not fully supported the prosecution and therefore declared hostile, but in cross-examination by the defence the witness has specifically stated that he had asked the appellants as to what were the reasons of the quarrels ensuing between them and the deceased and that the appellants had informed him that because of internal problems relating to household work quarrels were taking place. The witness admitted that from the conversation he had with the deceased, he was able to know that the deceased was not intending to stay in the joint family. The witness also admitted that the deceased was persuaded by her parents to stay in the joint family against her wishes.

13. The evidence of witness Bhagwatiben Ganpatlal Soni, PW-10, Exh.43, further shows that the appellants were insisting on the deceased to observe veil custom which was not liked by the deceased at all. This part of the evidence of Bhagwatiben is also not challenged by the defence. Further her evidence establishes that on previous evening the deceased and other daughters-in-law had adorned themselves to attend a marriage but the appellant No.2 had not permitted them to attend the marriage on the ground that daughters-in-law had caused delay in equipping themselves for the marriage. She has also claimed that in the morning of the day of incident she and another daughter-in-law had gone to attend marriages but the deceased was at the house.

14. A reasonable reading of the evidence on record establishes that the appellants were quarrelling with the deceased regarding household work to be performed by her as well as observance of veil by her. There is no manner of doubt that the deceased had no complaint against her husband but as she was being taunted continuously and as the appellants were quarrelling with her, she had decided to stay separate from the appellants which was also approved by her husband. The record of the case shows that the husband of the deceased was not settled in life at all but was insisting to stay separate from the appellants which speaks volumes about the curel treatment meted by the appellants to the deceased. To insist that the newly wedded bride must observe custom of veil prevalent in the family against her wishes is certainly a cruelty. Similarly, to find faults in household work and taunt a woman is also cruelty. The cruelty meted out by the appellants had reached such a stage that the deceased and her husband had decided to stay separate from the

appellants and had approached Arvindbhai Vishnubhai Jani for this purpose. The defence has led evidence to establish that in fact a room was hired for separate stay of the deceased with her husband but before the deceased and her husband could move to the new house, the deceased had committed suicide on April, 28, 1998. When the deceased who was a young bride had committed suicide within three months of her marriage at the house of the appellants, the appellants owe an explanation for it and absence of a plausible explanation, is a circumstance against the appellants. The claim of the appellants that the deceased was sentimental or dominating or that she had tendency to commit suicide is not borne out from the record of the case at all. Mr. A.D. Shah, learned counsel for the appellants has taken us through each and every letter addressed by the deceased to her husband and the contents of the letters exhibit that she had immense love and affection for her husband, but they do not establish that the deceased was either dominating or unreasonably sensitive or that she had exhibited any tendency to commit suicide in past. It is relevant to notice that on 14th April, 1998, the parents of the deceased had persuaded her and her husband to stay in the joint family of the appellants but the deceased had committed suicide on April 28, 1998 and therefore under such circumstances it is reasonable to infer that she must have been treated cruelly by the appellants. The evidence on the record would indicate that the deceased was harassed and even physocally assaulted and never appreciated by the appellants. The appellants had never allowed her to be happy in her matrimonial home. Normally a newly wedded woman who gets immense love and affection from her husband would not commit suicide for no reasons because it is nobody's case that the deceased was overtaken by joy and had therefore committed suicide. Therefore, there is no manner of doubt that the incessant harassment had driven her to commit suicide. The circumstances established on the record of the case clearly constitute cruelty within the meaning of Section 498-A. Taunting or insulting and scolding a woman over household work to be performed by her or insisting her to observe veil custom clearly attracts the term cruelty as defined under Section 498A. The record of the case shows that the cruelty was unabated, incessant and persistent. There is no manner of doubt that the deceased was in constant mental agony and torture on account of circumstances prevailing and cruelty meted out to her in her matrimonial home and this is quite evident from the two phone calls received by witness Jagdishchandra Chunnilal Soni. The evidence on record of the case would indicate that on the previous day of incident i.e. on

April 27, 1998, the appellant No.2 had not permitted the deceased and other daughters'-in-law to attend a marriage on the pretext that they had delayed their departure for attending the marriage whereas in the morning of the day of the incident, the appellant No.2 had permitted two other daughters-in-law to attend marriage but not permitted the deceased to attend the marriage. This treatment would certainly constitute cruelty to the deceased and though this incident is solitary in nature, it exhibits a tendency on the part of the appellant No.2 that she had no liking for the deceased and was therefore subjecting right from the beginning the deceased to the cruelty. Where the suicide has taken place within 7 years of marriage and there is evidence showing that the deceased was subjected to cruelty at the hands of her in-laws, a presumption that it was in-laws who abetted commission of suicide could be legitimately drawn and the conviction under Section 306 and 498 IPC would be proper. In the present case the deceased - a young girl had committed suicide within a short period of three months of her marriage and this fact by itself indicates that the physical and mental torture by the appellants was of such a nature and magnitude that not only her life had become miserable but it was unbearable. Therefore, the conviction of the appellants under Section 498, 306 IPC cannot be regarded as illegal. In State of Gujarat vs. Sunilkumar K. Jani (supra) the Division Bench has held that when extremity is ones's own creation, nothing can be inferred or assumed for or against the party. What is ruled therein is that if spouses are often quarrelling on one or another issue, it is the usual wear and tear of the married life and evidence indicating that accused was often quarrelling with the deceased (wife) would not amount to abetment for committing suicide in the facts and circumstances of the case. In the present case, the evidence does not indicate that the deceased had created such a situation for herself by her own acts that she had no alternative but to commit suicide. Further in the present case no allegations of cruelty have been levelled against the husband of the deceased but the evidence on record suggests that the appellants were quarrelling and taunting the deceased continuously over petty matters which had driven the deceased to commit suicide. Therefore, the appellants are not entitled to get any benefit on the basis of decision rendered in State of Gujarat (supra). In Indrasing M. Raol (supra), the learned Single Judge of this Court while interpreting the Section 498A has held that a solitary incident cannot be interpreted as sufficient evidence of cruelty or harassment to attract Section 498A. What is laid down therein is that every act of cruelty or harassment is not

made a crime under Section 498-A and prosecution has to establish that cruelty or harassment was unabated, incessant and persistent. Here in the present case, the cruelty is not constituted of a solitary incident. The evidence on record of the case would indicate that the deceased was being taunted and insulted regarding her method of doing the household work and was also scolded for not observing veil custom prevailing in the family. The evidence as also earlier establishes that the cruelty and/or harassment meted out to the deceased was physical as well mental and it was unabated, incessant and persistent and was grave in nature which had driven the deceased to commit suicide. Therefore, no benefit can be given to the appellants on the basis of judgment rendered in Indrasing M. Raol's case (supra). In Arvind Singh (surpa), the High Court had enhanced husband's conviction from 304B to 302 merely on the assumption that he had burnt his wife for marrying again. The assumption was based on statement of deceased's mother. Independent evidence, however, was not available for burning of wife nor for dowry demand. Under the circumstances, the Supreme Court has held that conviction under Section 304-B was not sustainable. In our case, it is not the prosecution case that the appellants had made any demand of any property or dowry, etc. Further in Arvind Singh's case the Supreme Court has held that when there was no specific evidence that deceased wife was subjected to pain or distress, the High Court was not right in sustaining the appellant's conviction under Section 498-A IPC. In our case, there is specific evidence that the appellants had subjected the deceased to pain or distress by taunting her continuously regarding household work to be performed by her as well as by insisting on her to observe veil custom prevalent in the family. Thus, the decision in Arvind Singh's case (supra) is of no avail to the appellants. In SATVIR SINGH AND OTHERS vs. STATE OF PUNJAB AND ANOTHER, (2001) 8 SCC 633 , the Supreme Court has explained the scope of Sections 306 read with Section 113-A of the Evidence Act as well as Section 498-A IPC and held as under :

" At the first blush we thought that there was no force in the said contention but on a deeper analysis we found that the contention is unacceptable. Section 306 IPC when read with Section 113-A of the Evidence Act has only enabled the court to punish a husband or his relative who subjected to a woman to cruelty ( as envisaged in Section 498-a IPC)if such woman committed suicide within 7 years of her marriage. It is immaterial for Section 306 IPC whether the

> cruelty or harassment was caused "soon before her death" or earlier. If it was caused "soon before her death" the special provision in Section 304-B IPC would be invocable, other wise resort can be made to Section 306 IPC."

15. Having regard to the facts and circumstances of the case, we are of the opinion that the learned Judge of the Trial Court who had the advantage of observing demeanour of the witnesses did not commit any error in raising presumption under Section 113-A of the Evidence Act, more particularly when on persuasion of her parents, the deceased with her husband had gone to reside with the appellants and within few days she had committed suicide. The evidence on record would establish that there is direct and perceptible nexus between the cruelty meted out by the appellants to the deceased and commission of suicide by the deceased Nayna on April 28, 1998. On overall view of the matter, we are satisfied that conviction of the appellants under Section 498A read with 306 IPC cannot be regarded as illegal and the same is hereby confirmed.

16. This brings us to the question whether having regard to the facts of the case, the punishment imposed on the appellants deserves to be enhanced. We may state that there is no allegation by the prosecution that any cruelty was meted out by the appellants to the deceased regarding any demand of dowry or property, etc. As desired by the son, the appellants had even made attempt to find out a separate accommodation for him and the deceased. The present case is not one in which cruelty as contemplated for unlawful demand of property was meted out to the deceased. The cruelty which was meted out to the deceased was due to social custom prevailing in the family of the strata of the society to which the appellants belong. In Naresh Kumar and Another vs. State of Haryana, 1994 SCC (Cri) 502, death of a married woman by burning had taken place. The High Court had given cogent and convincing reasons for ruling out defence theory of accident. The evidence on record of that case indicated that the husband was not present at the time of incident whereas mother-in-law had immediately taken the deceased to the hospital. Under the circumstances, the Supreme Court had reduced the sentence of 5 years RI to 2 and half years RI. Again in State of A.P. (supra), while considering question of adequacy of sentence, the Supreme Court had imposed punishment of RI for 3 years plus fine of Rs. 5000 for the offence punishable under Section 306 IPC. In the present case we find that the learned Judge has given

cogent reasons as to why punishment of three year has been imposed on the appellants. However, we do not find any justification for awarding simple imprisonment and having regard to the facts of the case we are of the opinion that rigorous imprisonment of three years ought to have been imposed on the appellants.

17. For the reasons stated above, the Criminal Appeal No. 549/2001 fails and is dismissed. Criminal Misc. Application No. 5903/2001 for enhancement of sentence is partly accepted and it is directed that the appellants shall undergo rigorous imprisonment of three years instead of simple imprisonment for three years imposed by the Trial Court. The punishment of fine imposed by the learned Judge of the Trial Court on the appellants is hereby confirmed and not interfered with at all. Accordingly, Criminal Misc. Application No. 5903 of 2001 is partly allowed.

18. Mudammal to be disposed of in terms of the direction given by the learned Trial Judge in the impugned judgment.

(J.M. Panchal, J.)

(J.R. Vora, J.)

p.n.nair